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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,351	01/31/2001	Daniel H. Maes	00.22US	5974

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EXAMINER	
WILLIS, MICHAEL A	

ART UNIT	PAPER NUMBER
1617	

DATE MAILED: 08/27/2002 15

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/773,351	Applicant(s) MAES ET AL.	
	Examiner Michael A. Willis	Art Unit 1617	

--The MAILING DATE of this communication appears on th cov r sheet with the correspondenc address --

THE REPLY FILED 01 August 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a)☒ will not be entered or b)☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *1-20*.

   Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☐ Other: _____

MICHAEL G. HARTLEY
PRIMARY EXAMINER

Michael A. Willis
Patent Examiner

Continuation of 5. does NOT place the application in condition for allowance because: Claim 19 is rejected under 35 USC 112, 1st paragraph for lack of enablement due to the phrase "or preventing" for reasons as stated previously. In response to Examiner's statemen that there is no data in the specification to allow a prediction of certain types of damage to the skin, applicant argues that it is not necessary for the specification to disclose what is already known in the art. Applicant further argues that it is not necessary to qualify the degre of accuracy with which a prediction is made. Applicant further asserts that anyone knows that damage to the skin is caused by the sun or by natural aging. Therefore, applicant concludes that preventing damage to the skin is predictably associated with the skin barrier function. Applicant's argument is not convincing. As stated previously, there is no data in the instant application or the prior art to allow a prediction of the damage associated with the reduciton or loss of skin barrier function. Any correlations that may exist neither prove causality nor allow for accurate predictions in an individual. Absent such predictions, it is not possible to show the prevention of skin damage via the improvement of skin barrier function. Applicant points to Example 1 of the specification as providing data necessary for enablement. However, Example 1 merely shows an ability of the compositions to repair the skin barrier after physical insult. In no wa does Example 1 address the issue of "preventing damage to the skin, wherein the damage is associated with a reduction or loss of skin barrier function". Finally, applicant relies on the dictionary definition of "prevention" to argue that treating a condition is the same as preventing a condition. Applicant's argument is considered, but is not persuasive. Applicant's suggestion that prevention is the same as "treatment that keeps the condition from occurring further" is rejected. Reduction of a symptom is commensurate with treatment rather than prev ntion. The rejection can be obviated by removal of the phrase "or preventing".

Claims 1-20 are rejected under 35 USC 103(a) as being unpatentable over Ribier et al (US Pat. 5,650,166) in view of Subbiah (US Pat. 6,1150,381) for reasons as stated previously. Applicant argues that there is no support for the examiner's position that the "mixtur " of the instant claims is the same as the lipid vesicles of the '166 reference. Applicant is incorrect in equating the terms. The examiner does not suggest that a mixture and lipid vesicles are the same thing. Rather, a "mixture" is a broad term which includes the subset of lipid vesicles. In other words, all lipid vesicles meet the limitation of a "mixture" even though some mixtures do not meet the limitations of lipi vesicles (Abraham Lincoln was a man, but not all men are Abraham Lincoln). In order to overcome the rejection, applicant must amend the claims such that the claims do not read on vesicle compositions, assuming support for such compositions is present in the sp cification. Applicant further argues that unexpected results are shown in the specification at page 4, lines 1-2, which states that it is unexpected to combine an exfoliant such as N-acetyl glucosamine, which acts to desquamate the skin, with cholesterol sulfate, which acts to retard desquamation. However, Ribier teaches the use of both cholesterol sulphate and N-acetylglucosamine. Furthermore, th unexpected results discussed by page 4 of the specification, when interpreted in view of Example 1, are not commensurate in scope with the claims. The composition of Example 1 contains 29 ingredients, and its activity on skin is compared to skin that is untreated. The examiner is unable to make any meaningful conclusions with respect to the combined activity of 2 of the 29 ingredients in such a comparison.